Cargill, Inc. *and* United Food and Commercial Workers International Union, Local No. 324. Case 21–CA–164025

February 4, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by United Food and Commercial Workers International Union, Local No. 324 (the Union), the General Counsel issued the complaint on November 19, 2015, alleging that Cargill, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 21–RC–136849. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations of the complaint, and asserting affirmative defenses.

On December 17, 2015, the General Counsel filed a Motion for Summary Judgment. On December 22, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint the Respondent denies, among other things, the allegation that since about October 23, 2015, the Respondent has failed and refused to recognize and bargain with the Union, arguing that the election and certification are invalid and therefore it has no duty to bargain.[1] In its opposition to the motion, the Respondent repeats its contentions, raised and rejected in the representation proceeding, that (1) the Board failed to follow its Rules and Regulations and Casehandling Manual when it ordered the election in Case 21–RC–136849 instead of dismissing the Union's petition; (2) the unit in which the election was directed is inappropriate; and (3) the Union engaged in objectionable conduct requiring that the election be set aside. We find that none of these assertions raise any issue warranting a hearing.

The Respondent further contends that factual errors in the General Counsel's motion relate to the issue of whether the Board violated its Rules and Regulations and Casehandling Manual and that these issues must be resolved at a hearing. Specifically the Respondent cites (1) an error regarding the date on which the Union filed the petition in Case 21–RC–136849, and (2) the motion's statement that the Regional Director ordered a hearing on the Respondent's Objection 1, when in fact the Regional Director dismissed that objection in her Supplemental Decision and Order directing hearing and notice of hearing.[2] We find that these inadvertent errors in the General Counsel's motion are de minimis and do not raise any issue warranting a hearing.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with a facility in Fullerton, California, has been engaged in the business of operating a cooking oil processing facility.

In conducting its operations during the 12-month period ending September 30, 2014, a representative period, the Respondent purchased and received at its Fullerton,

[1] The Respondent does not assert that it has recognized and bargained with the Union.

[2] The Respondent filed a request for review of that Supplemental Decision and Order in which it argued that the Regional Director erred in dismissing Objection 1. By unpublished Order dated June 24, 2015, the Board denied review.

[3] Member Miscimarra would have granted review in the underlying representation proceeding to decide whether the petitioned-for bargaining unit is appropriate under traditional community-of-interest standards. While Member Miscimarra remains of that view, he agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, supra. In light of this, Member Miscimarra agrees with the decision to grant the Motion for Summary Judgment.

California facility goods valued in excess of $50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on December 4, 2014, the Union was certified on October 22, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> Included: All full-time and regular part-time packaging, shipping, and receiving employees employed by the Respondent at its facility located at 566 North Gilbert Street, Fullerton, California.
>
> Excluded: All other employees, maintenance employees, terminal employees, quality-control employees, staffing-agency employees, office clerical employees, guards and supervisors as defined in the Act.

On October 27, 2015, the Board issued a revised certification of representative correcting the inadvertent error of omitting the Union's name in the certification of representative.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated October 9, 2015, and by email dated October 23, 2015, the Union requested that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since about October 23, 2015, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about October 23, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Cargill, Inc., Fullerton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food & Commercial Workers International Union, Local No. 324 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> Included: All full-time and regular part-time packaging, shipping, and receiving employees employed by the Respondent at its facility located at 566 North Gilbert Street, Fullerton, California.
>
> Excluded: All other employees, maintenance employees, terminal employees, quality-control employees, staffing-agency employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Fullerton, California, copies of the attached

notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 23, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 4, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with United Food & Commercial Workers International Union, Local No. 324 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

Included: All full-time and regular part-time packaging, shipping, and receiving employees employed by us at our facility located at 566 North Gilbert Street, Fullerton, California.

Excluded: All other employees, maintenance employees, terminal employees, quality-control employees, staffing-agency employees, office clerical employees, guards and supervisors as defined in the Act.

CARGILL, INC.

The Board's decision can be found at www.nlrb.gov/case/21–CA–164025 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."